

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

SOUTHEAST ACCESS, LLC,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	FILE NO. 4:09CV-183-HLM
SCAFFOLD INDUSTRY INSURANCE)	
COMPANY RISK RETENTION GROUP,)	
INC. d/b/a SCAFFOLD INDUSTRY)	
INSURANCE COMPANY (RRG), INC.,)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S NOTICE OF OBJECTION AND MOTION TO
STRIKE PARAGRAPHS FIVE AND SIX OF THE
DECLARATION OF JUDITH RAY**

COMES NOW Plaintiff Southeast Access, LLC by and through its undersigned counsel and pursuant to Rule 56(e) of the Federal Rules of Civil Procedure (“FRCP”) and Rule 103 of the Federal Rules of Evidence (“FRE”)¹ files this Notice of Objection and Motion to Strike Paragraphs Five and Six of the Declaration of Judith Ray and shows the Court the following:

1. This is not a motion to strike pursuant to FRCP 12, rather this is a non-regulatory motion to strike under the FRCP and a notice of objection under the FRE.

I. FACTUAL BACKGROUND:

On August 4, 2010, Defendant Scaffold Industry Insurance Company Risk Retention Group, Inc. d/b/a Scaffold Industry Insurance Company (RRG), Inc. (“SIIC”) filed the Declaration of Judith Ray (“Declaration”) in support of its Response to Plaintiff’s Motion for Summary Judgment. A true and accurate copy of the Declaration is attached as Exhibit “A”. Paragraphs five and six of the Declaration refer to the 2006, 2007, and 2008 CGL policies issued by SIIC to Southeast Access. Copies of said policies were not attached to the Declaration nor were they provided during the discovery process or listed in Defendant’s Initial disclosures.

II. ARGUMENT AND CITATION OF AUTHORITY:

Pursuant to FRCP 56(e)(1), “if a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit.” Here, the Declaration is not compliant with FRCP 56(e)(1) as it references certain documents but fails to attach (let alone authenticate) the required copies.

Out of an abundance of caution, Southeast Access files both a Notice of Objection and Motion to Strike. The proper method for challenging the admissibility of evidence in an affidavit is to file a notice of objection to the

challenged testimony and not a motion to strike. *Pinkerton & Laws Co. v. Roadway Express, Inc.*, 650 F. Supp. 1138, 1141 (N.D. Ga. 1986). However, with regard to a procedural defect, there is no particular method prescribed by the Court. A party must move to strike a defective affidavit or else any such defect is waived. *In re Teltronics Services, Inc.*, 762 F.2d 185, 192 (2nd Cir. 1985).

A. THE COURT SHOULD STRIKE PARAGRAPHS FIVE AND SIX OF THE DECLARATION BASED ON SOUTHEAST ACCESS'S OBJECTIONS:

Paragraph Five:

The 2006 and 2007 CGL policies issued by SIIC to Southeast contain substantially the same terms and provisions as the 2008 policy at issue in this litigation.

Objection:

The above stated paragraph lacks any evidentiary foundation and is premised on hearsay. Specifically, it references the 2006 and 2007 CGL policies issued by SIIC but fails to attach the referenced documents as required by FRCP 56(e)(1).

Paragraph Six:

All policies issued by SIIC to Southeast contain the classification limitation endorsement.

Objection:

The above stated paragraph lacks any evidentiary foundation and is premised on hearsay. Specifically, it references the policies issued by SIIC (2006, 2007, and 2008 CGL policies) but fails to attach the referenced documents as required by FRCP 56(e)(1).

As paragraphs five and six of the Declaration are not in compliance with FRCP 56(e)(1), those paragraphs should be stricken.

III. CONCLUSION:

For the foregoing reasons, Southeast Access respectfully requests that this Court sustain its objections, grant its motion to strike, and strike the inadmissible testimony.

Respectfully submitted, this 18th day of August, 2010.

/s/Andrew J. Becker

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CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.

Respectfully submitted, this 18th day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFF’S NOTICE OF OBJECTION AND MOTION TO STRIKE PARAGRAPHS FIVE AND SIX OF THE DECLARATION OF JUDITH RAY was electronically filed using the Court’s ECF system and that the below-listed counsel are ECF users and will be served via the ECF System:

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Respectfully submitted, this 18th day of August, 2010.

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